



PSC REF#:60386

Michael Best & Friedrich LLP  
Attorneys at Law

One South Pinckney Street  
Suite 700  
Madison, WI 53703

P.O. Box 1806  
Madison, WI 53701-1806

Phone 608.257.3501  
Fax 608.283.2275

Lauren L. Azar  
Direct 608.283.2254  
Email llazar@michaelbest.com

Public Service Commission of Wisconsin  
RECEIVED: 08/31/06, 3:37:23 PM

August 31, 2006

**VIA ERF**

Ms. Sandra Paske  
Secretary to the Commission  
Public Service Commission of Wisconsin  
610 North Whitney Way  
P.O. Box 7854  
Madison, WI 53707-7854

Re: **PSC Docket No. 137-CE-139:**

Application of American Transmission Company, as an Electric Public Utility, to Construct a New Waunakee Substation and Build a New 138 kV Line From the North Madison Substation to the New Waunakee Substation in the Town of Vienna and Westport, Dane County, Wisconsin

Dear Ms. Paske:

With this letter, American Transmission Company LLC and ATC Management Inc. are filing the following documents on the Commission's Electronic Regulatory Filing System ("ERF"):

- Objections to the City of Madison's Motions to Intervene and to Consolidate; and
- Affidavit of Jamal Khudai.

We are also sending hard copies of this official filing to all parties included on the attached service list.

Very truly yours,

**MICHAEL BEST & FRIEDRICH LLP**

*/s/ Lauren L. Azar*

Lauren L. Azar

LLA:kar  
Enclosures

cc: Attached Service List for ATC's Response to the City of Madison's Motions to Intervene and Consolidate

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**BEFORE THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN**

**Application of American Transmission )  
Company, as an Electric Public Utility, to )  
Construct a New Waunakee Substation and )  
Build a New 138 kV Line From the North )  
Madison Substation to the New Waunakee )  
Substation in the Towns of Vienna and )  
Westport, Dane County, WI )**

**137-CE-139**

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**AFFIDAVIT OF SERVICE**

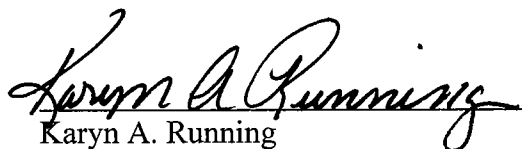
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STATE OF WISCONSIN     )  
                                      : ss  
COUNTY OF DANE         )

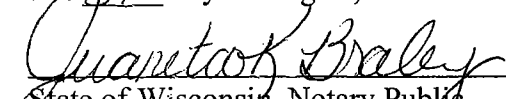
I, Karyn A. Running, hereby state that I caused true and correct copies of:

- (1) ATC's Objections to the City of Madison's Motions to Intervene and to Consolidate, and
- (2) the Affidavit of Jamal Khudai

to be served (via U.S. Mail) upon the attached service list this 31<sup>st</sup> day of August, 2006.

  
Karyn A. Running

Subscribed and sworn to before me  
this 31<sup>st</sup> day of August, 2006.

  
State of Wisconsin, Notary Public  
My commission expires: 1-31-10

**Docket No. 137-CE-139**

**Service List for ATC's Response to the City of Madison's Motions to Intervene and Consolidate**

**City of Madison**

Michael P. May, Attorney  
Office of the City Attorney  
Room 401, City-County Bldg.  
210 Martin Luther King, Jr. Blvd  
Madison WI 53703

**Wire Safe Wisconsin**

Robin and Howard Stearns  
1101 Bluebird Trail  
Waunakee, WI 53597

**Citizens for Responsible Energy**

Robin Stearns  
1101 Bluebird Trail  
Waunakee, WI 53597

**BEFORE THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN**

<b>Application of American Transmission</b>	)	
<b>Company, as an Electric Public Utility, to</b>	)	
<b>Construct a New Waunakee Substation and</b>	)	<b>137-CE-139</b>
<b>Build a New 138 kV Line From the North</b>	)	
<b>Madison Substation to the New Waunakee</b>	)	
<b>Substation in the Towns of Vienna and</b>	)	
<b>Westport, Dane County, WI</b>	)	

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**AMERICAN TRANSMISSION COMPANY LLC AND ATC MANAGEMENT INC.'S  
OBJECTIONS TO  
THE CITY OF MADISON'S  
MOTIONS TO INTERVENE AND TO CONSOLIDATE**

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The Applicants, American Transmission Company LLC and ATC Management Inc., its corporate manager (collectively, "ATC"), submit the following objections to the City's motions for intervention and consolidation.

**I. ATC'S OBJECTION TO THE CITY OF MADISON'S MOTION TO INTERVENE**

The City of Madison seeks to intervene as a matter of right under Wis. Admin. Code § PSC 2.21(1) or, in the alternative, through permissive intervention under subsection (2). The Commission's standards for intervention are set forth as follows:

(1) INTERVENTION BY RIGHT. A person whose substantial interests may be affected by the commission's action or inaction in a proceeding shall be admitted as an intervenor.

(2) PERMISSIVE INTERVENTION. A person not satisfying the criteria of sub. (1) may nevertheless intervene in a proceeding or docket if the person's participation likely will promote the proper disposition of the issues to be determined in the proceeding or docket and if the person's participation will not impede the timely completion of the proceeding or docket.

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**North Madison to Huiskamp Transmission Project**  
**ATC's Objections to the City of Madison's Motions to Intervene and Consolidate**

Wis. Admin. Code § PSC 2.21. Because the City does not qualify for either intervention by right or permissive intervention, we urge the Commission to deny the City's request for full party status in this docket.

**A. The City Has Not Demonstrated a Substantial Interest in this Docket and Is, Therefore, Not Eligible for Intervention by Right.**

The City of Madison in this proceeding seeks intervention by right pursuant Wis. Admin. Code § PSC 2.21(1), which provides that “a person whose substantial interests may be affected by the Commission's action or inaction in a proceeding shall be admitted as an intervenor.” (Emphasis added.) To establish a “substantial interest,” the Commission requires persons seeking intervention to demonstrate the standing that would be necessary to obtain judicial review of a final Commission order in the proceeding. *Order Denying The Application Of ANR And Memorandum Decision*, Docket No. 6650-GP-101 (June 29, 1999) (the “ANR Pipeline Order”), p. 5 (*citations omitted*) (*Copy of Order attached*). The Commission has adopted the two-part test that Wisconsin courts have long used to determine standing for judicial review. First, the petitioner must demonstrate that it has sustained an injury due to an agency decision. That injury must not be hypothetical or conjectural, but must be “injury-in-fact.” Second, the petitioner must show that the injury is to an interest which the law recognizes or seeks to regulate or protect. *Town of Delavan v. City of Delavan*, 160 Wis. 2d 403, 410-11, 466 N.W.2d 227 (Ct. App. 1990); *Waste Management of Wisconsin, Inc. v. DNR*, 144 Wis. 2d 499, 505, 424 N.W.2d 685, 687 (1988). In this case, the City fails both parts of the test.

First, the City fails to describe any injury-in-fact that it would suffer from a Commission order approving or denying ATC's application to build a new 138 kV transmission line from the

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**North Madison to Huiskamp Transmission Project**  
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Huiskamp Substation to the North Madison Substation (along with attendant upgrades at the substations). No portion of this North Madison to Huiskamp Transmission Project ("Project") is within the City of Madison. The City of Madison argues it has a substantial interest in this case because the "Dane County Lines" will have an impact on the City and its residents in terms of both environmental impacts and rates. (City Motion, ¶ 3.) It defines the "Dane County Lines" to include the Rockdale-West Middleton 345 kV project, West Middleton-Walnut-Blount 138 kV project and a North Madison-West Middleton 345 kV project. (City Motion, ¶ 2.) Applications have not been submitted to the Public Service Commission of Wisconsin ("PSCW") for any of these Dane County Lines. Hence, the injury-in-fact the City is alleging does not arise from this docket, but instead arises from future projects not yet filed with the Commission that would be located in the City of Madison.

Additionally, the City mentions "environmental impacts and rates" as grounds for its substantial interest in this Project. As to environmental impacts, the City lumps this Project in with the Dane County Lines. Since it is unclear what environmental impacts the City believes this Project will have on the City and its residents, the City's pleading fails to establish any basis for an environmental interest in this Project. Therefore, the City cannot base its argument for intervention by right on environmental impacts.

As to rates, the City describes a potential injury that the law does not seek to protect when evaluating an application for a certificate of public convenience and necessity ("CPCN"). *See* Wis. Stat. § 196.491(3)(d). The CPCN law is not intended to regulate rates. ATC's rates are set by the Federal Energy Regulatory Commission and the rates are system-wide. A City of Madison or Dane County area ratepayer has no interest in this Project different from the

customers of an electric utility in Upper Michigan or Illinois served by ATC. So, if these intervenors are admitted by right on the basis of ratepayer status, Illinois or Upper Michigan residents could be admitted as well. The Project will, admittedly, have an ultimate impact on rates but not differentially for local ratepayers. The CPCN law does not evaluate ATC rates generally. Instead, the CPCN law requires a weighing and balancing of the costs of the proposed project with its benefits. Wis. Stat. § 196.491(3)(d)(5). This is a siting case, and the City of Madison is not entitled to intervention simply because it and its residents are ratepayers of ATC.

Desperately seeking other possible connections to this Project, the City also notes that the North Madison to Huiskamp Transmission Project would be interconnected with the Dane County transmission grid and, therefore, if built it would impact portions of the grid located in the City of Madison. (City Motion, ¶¶ 3 & 4.) There are hundreds of thousands of people who depend on the Dane County transmission grid and millions who depend on the regional transmission grid operated by the Midwest Independent System Operator ("MISO"). The logic of the City's position is that each person served by the regional transmission grid is entitled to intervention by right in a docket that primarily addresses local needs. Though the CPCN law certainly evaluates the impact of a proposed project on that grid, the CPCN law does not seek to protect the interests of each individual customer. Hence, the City's connection to the regional grid is insufficient to qualify the City for intervention by right in this docket.

In sum, the City's "substantial interest" argument does not lie in this proceeding in which the Commission will determine the need for and the cost of this Project. Its "substantial interest" argument is focused on other future transmission projects that would be located in the City of Madison, the so-called "Dane County Lines". To bolster its "substantial interest" argument in

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**North Madison to Huiskamp Transmission Project**  
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this docket, the City seeks to consolidate this docket with future dockets. However, to seek consolidation, the City must first be granted party status in this docket. In other words, the City's request for party status is predicated upon the Commission granting the City's motion for consolidation, which can only be considered after the City is a party. The City cannot "bootstrap" itself into full party status. Besides circularity problems, as explained below, the City's motion for consolidation is invalid under the law. The City has failed to establish an entitlement to intervene by right in this proceeding. As demonstrated below, the City also fails to make an adequate case for permissive intervention.

**B. The City Did Not Provide Any Facts Suggesting that its Participation Would Benefit this Proceeding and, Therefore, the City Is Not Entitled to Permissive Intervention.**

Apparently recognizing the absence of a substantial interest in this case, the City also requests full party status through permissive intervention. The City provides no facts to support its argument for permissive intervention; the City merely states that it is "entitled" to permissive intervention and recites the standard (because "its participation will likely promote the proper disposition of the issues to be determined in this proceeding"). (City Motion, ¶ 4.) Without providing any factual justification for the importance of its participation, the City has failed to establish a *prima facie* case for permissive intervention, and its motion for permissive intervention must be denied.

Wis. Admin. Code § PSC 2.21(2) allows intervention on a showing that the intervenor's participation "likely will promote the proper disposition of the issues to be determined in the proceeding and if the person's participation will not impede the timely completion of the proceeding or docket." (Emphasis added.) The City has merely recited the "proper disposition"



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prong of the test in a conclusory manner. It has not addressed timeliness. Since its entire emphasis appears to be the other Dane County Lines, the City's motions actually suggest that it wants to broaden the issues and delay the proceeding until other projects develop. This is entirely contrary to the permissive intervention test.

In sum, this Project is not located in the City. The Project is located in Dane County and passes through the Village of Waunakee. Both the County and Village have moved to intervene, and ATC is not objecting to their participation as intervenors. Indeed, ATC welcomes the participation of parties who have demonstrated a substantial interest in this matter or who have demonstrated how they will further the disposition of this case. The City has not established either, and its motion to intervene should be denied.

## **II. ATC'S OBJECTION TO THE CITY'S MOTION TO CONSOLIDATE**

The City of Madison also asks the Commission to consolidate "this docket with other Dane County Lines dockets that either will or may be filed in the near future." (City Motion, ¶ 5.) If the City of Madison is admitted as a party, its motion to consolidate should be promptly denied.<sup>1</sup>

There are no PSCW rules governing consolidation of PSCW dockets. This could mean that consolidation is not available, but consolidation has been permitted in other proceedings generally with the consent of the parties. Here there is no consent. The rules of Wisconsin civil procedure provide a useful reference point when administrative rules are silent on an issue. Wis. Stat. § 805.05(1) specifies the conditions under which a court may consolidate two civil actions. It specifies as follows:

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<sup>1</sup> Notwithstanding the fact that City of Madison has made this motion before being admitted as party, ATC does not wish to stand on formality.

**805.05 Consolidation; separate trials. (1) CONSOLIDATION.**

(a) When actions which might have been brought as a single action under s. 803.04 are pending before the court, it may order a joint hearing or trial of any or all of the claims in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

Consolidation is only available when two related actions are currently pending before the tribunal. Here, the City of Madison asks the Commission to consolidate this North Madison to Huiskamp docket with others that “will or may be filed in the near future.” (City Motion, ¶ 5.) Thus, the City admits there are no other pending actions with which this docket could be consolidated. On its face, the City’s motion fails to meet the common sense threshold requirements for consolidation and its motion must be denied.

Even if ATC had submitted applications for the other Dane County Lines, consolidation would still be inappropriate because the North Madison to Huiskamp Transmission Project is a stand-alone project. While it may be true that the transmission system in ATC's footprint is interconnected, it is not true that interconnectedness, even within a geographic area the size of Dane County, requires that projects be considered jointly. Indeed, the opposite is true. Projects are proposed and brought forward as they are needed. While there are other projects planned for Dane County, their need, timing and implementation is a matter yet to be determined.

Attached to this response is an Affidavit of Jamal Khudai. That Affidavit makes the following principal points:

1. The Project is a project independent from the Dane County Lines cited in the City’s motion.

2. The need for and the timing of the Project are principally driven by local needs and conditions.
3. This Project would be proposed and built even if none of the Dane County Lines were built (i.e., this Project is not dependent upon the construction of future projects).
4. The Energy Initiative Report on Electric Reliability in Dane County ("EI Report") cited in paragraph 7 of the City of Madison's motion will not be introduced by ATC for its case in chief supporting this Project application.

Though the City has couched its request in terms of a consolidation of actions, what the City really seeks is a new type of planning process for transmission projects. The City of Madison is, in effect, arguing for a "mini-advance plan" process. That process is no longer legislatively authorized, and ATC has followed the process that is now in place.

### **III. CONCLUSION**

1. The City of Madison has not demonstrated a substantial interest in this docket and, therefore, is not entitled to intervention by right. The City has made no showing that it will advance the disposition of this proceeding and, therefore, failed to establish any basis for permissive intervention.
2. Because the City seeks to consolidate actions that are not currently pending, the City's motion for consolidation must be denied. The City's motion to consolidate is actually a request for regional transmission planning. The Project is a stand-alone project that is required for localized need and can and should be evaluated on its own merits. The City's request for a mini-advance plan must be denied.

**Docket No. 137-CE-139**  
**North Madison to Huiskamp Transmission Project**  
**ATC's Objections to the City of Madison's Motions to Intervene and Consolidate**

Dated this 31st day of August, 2006.

**MICHAEL BEST & FRIEDRICH LLP for  
AMERICAN TRANSMISSION COMPANY LLC  
and ATC MANAGEMENT INC.**

A handwritten signature in black ink, appearing to be 'D. J. Hanson', written over a horizontal line.

David J. Hanson, SBN 1012253  
Lauren L. Azar, SBN 1023003

Michael Best & Friedrich LLP  
One South Pinckney Street, Suite 700  
P.O. Box 1806  
Madison, WI 53703  
(608) 257-3501

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**BEFORE THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN**

<b>Application of American Transmission</b>	)	
<b>Company, as an Electric Public Utility, to</b>	)	
<b>Construct a New Waunakee Substation and</b>	)	<b>137-CE-139</b>
<b>Build a New 138 kV Line From the North</b>	)	
<b>Madison Substation to the New Waunakee</b>	)	
<b>Substation in the Towns of Vienna and</b>	)	
<b>Westport, Dane County, WI</b>	)	

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**AFFIDAVIT OF JAMAL KHUDAI**

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STATE OF WISCONSIN                    )  
  : ss  
COUNTY OF WAUKESHA                )

I, Jamal Khudai, being first duly sworn on oath, depose and say:

1. I am employed by ATC Management Inc., the corporate manager of American Transmission Company LLC (together "ATC") as a manager of the strategy group in system planning. My office is located at N19 W23993 Ridgeview Parkway West, Waukesha, Wisconsin 53188.
2. I have been the principal planner for the North Madison-Huiskamp Project, which is being considered in Docket No. 137-CE-139 (hereafter, the "Project").
3. The following explains generally how ATC conducts the planning studies that are ultimately used to develop a project like North Madison to Huiskamp. ATC receives demand and supply forecast from local load serving entities every year. ATC combines

this information with ATC's system configuration and NERC's Eastern Interconnection models to evaluate short, medium and long-term system needs using NERC standards and ATC Planning Criteria. Models are built to represent several years. For example, if the model is built in 2003 representing year 2010, then it would be called year "2003 series 2010 model". I analyzed 2003, 2004 and 2005 series models to determine need for the Project and provided results for the 2004 series 2005, 2005 series 2010, 2003 series 2012 and 2005 series 2014 with the CPCN Application. My studies and need determination are based on three years' worth of system outlook accounting for changes in generation and demand forecasts. By contrast, I participated in Dane County Energy Initiative and provided analyses using a single 2003 series 2012 system model.

4. I am also familiar with other transmission improvements that ATC is considering in the Dane County area.
5. ATC is proposing to construct the Project primarily for eliminating the stress on local lines and improving bulk power transport into northern Dane County.
6. The need for and the timing of the Project are principally driven by local needs and conditions.
7. The existing Blount-Ruskin and North Madison-Dane 69 kV lines are expected to overload as early as 2009. (*See Application, Appendix B, Exhibit B, pp. 22-25.*)
8. In addition to thermal overloading problems, the limited number of lines serving the Waunakee area presents challenges and risks for maintaining uninterrupted electrical service in this area. For instance, to perform routine or emergency maintenance, lines must be taken out of service. Since there are a limited number of lines serving the

Waunakee area, careful planning is required to perform any maintenance, as lines once taken out of service cannot be re-energized quickly. This constrained system diminishes the ability to conduct maintenance on the existing lines thereby ultimately degrading area reliability.

9. If a problem does arise, there is no local generation in Waunakee area that could be dispatched to relieve overloads or potential voltage problems.
10. The installation of lines anywhere else in Dane County will not resolve the capacity shortage issues in the Waunakee area. ATC has referred to this capacity shortage as the "Waunakee Problem" in its application. (See Application, Addendum I, page 5C.) To effectively address this capacity shortage, new local lines are needed. (See Application, Addendum I, page 5C.) The Project is intended to address this local capacity shortage.
11. The Project is independent from other transmission improvements currently being considered for Dane County. Due to the dynamic nature of the transmission system--especially load forecast and local generation--it is not certain what, if any, other projects may be proposed to the Commission that would be located in Dane County as each project must be justified separately.
12. Other projects located outside of the Waunakee area will not resolve the Waunakee Problem. For instance, ATC evaluated a North Madison-Sycamore 138 kV line as an alternative to North Madison-Huiskamp. (Application, Addendum I, page 5G.) However, the North Madison-Sycamore alternative was rejected because it would only help other areas in Dane County, not the Waunakee area. Specifically, North Madison-Sycamore would not address the local need because it is located outside of the Waunakee

area. Similarly, no other Dane County project under consideration brings an additional supply source in the Waunakee area.

13. The Project is proposed and, if approved, will be built even if no other transmission improvements are completed in Dane County. No other project is currently being considered that would bring capacity into the Waunakee area where such need has been identified. In other words, the Project is not dependent upon the construction of future projects.
14. The Project would originate from a major import path for Dane County (the Columbia-North Madison doubled-circuited 345 kV lines) that terminates at the North Madison substation. Hence, the power that will be carried by the Project into the Waunakee area does not depend on the construction of an improved import path from the Rockdale substation (which is the subject of another potential Dane County project).
15. I was involved in preparing the transmission studies that were cited in The Energy Initiative Report on Electric Reliability in Dane County ("EI Report"). Those transmission studies, which were completed in 2003, represented the very early stages of planning for transmission upgrades in the Dane County area. Therefore, those studies necessarily included the area impacted by the Project.
16. Subsequent to those early studies, ATC continued to refine its planning for the area. As described in the Scope Document for the Project, ATC reviewed a number of options for solving the problems that will be addressed by the Project. ATC's selection of the Project was based on studies conducted after the EI Report.



17. ATC's case in chief supporting the Project application will not include the EI Report.

Dated this 31st day of August, 2006.

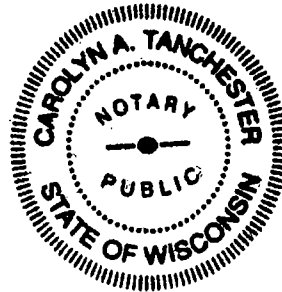
Jamal M. Khudai  
Jamal Khudai

Subscribed and sworn to before me  
this 31<sup>st</sup> day of August, 2006.

Carolyn A. Tanchester

Notary Public  
State of Wisconsin  
My Commission Expires 4/13/08

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Date Mailed June 29, 1999
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**BEFORE THE**  
**PUBLIC SERVICE COMMISSION OF WISCONSIN**

Wisconsin Gas Company 1998-2003 Gas Supply Plan

6650-GP-101

**ORDER DENYING THE APPLICATION OF ANR  
AND MEMORANDUM DECISION**

On April 13, 1999, Wisconsin Gas Company ("WGC") filed with the Commission for approval, a supplement to its 1998-2003 Gas Supply Plan ("the Gas Supply Plan Supplement"). This Gas Supply Plan Supplement involves a precedent agreement for firm transportation service on the recently announced Guardian Pipeline. The firm transportation service envisioned by the precedent agreement would displace transportation services WGC currently receives from ANR Pipeline Company ("ANR") when those transportation agreements expire. Commission staff is currently reviewing the Gas Supply Plan Supplement to determine whether the transportation service contemplated by the precedent agreement is reasonable in terms of reliability and cost.

On May 4, 1999, ANR filed with the Commission a document entitled "Application of ANR Pipeline Company To Intervene, Motion for Hearing and For Disclosure of Documents, and Request for Prehearing Conference." In this document, ANR sought to intervene in the Commission's review of the Gas Supply Plan Supplement; a contested case hearing on the Gas Supply Plan Supplement pursuant to Wis. Stat. § 227.42; disclosure of specified documents which had been filed by WGC pursuant to the Commission's confidentiality procedures; and the scheduling of a prehearing conference.

At its open meeting on May 25, 1999 the Commission denied the Application of ANR Pipeline Company to Intervene, its Motion for Hearing and for Disclosure of Documents, and its Request for Prehearing Conference in the above docket. It is so ordered.

### **MEMORANDUM DECISION**

ANR Pipeline Company is an interstate pipeline which is regulated by the Federal Energy Regulatory Commission. ANR's principal place of business is in Detroit, Michigan but ANR has facilities in Wisconsin which it uses in the provision of interstate pipeline services to WGC, among others. ANR is not a customer of WGC. ANR does purchase some natural gas directly from Wisconsin utilities (other than WGC) and buys other natural gas indirectly from some Wisconsin utilities (other than WGC) through its lease payments for physical space in Wisconsin.

WGC is a natural gas public utility domiciled in the State of Wisconsin. WGC provides two basic services to its customers. First, it sells natural gas to customers in its various franchised service territories in Wisconsin. As a natural gas merchant, WGC purchases natural gas supplies for its sales customers from producers, arranges transportation of this gas on interstate pipelines (including ANR) to its various service areas and distributes the natural gas to its customers. Secondly, WGC provides local distribution service to transportation customers. Transportation customers purchase their own natural gas supplies directly from producers. Such customers must then arrange with interstate pipelines (including ANR) for transportation to WGC's service areas in Wisconsin. Once the gas is received by WGC, it is delivered to the customers' premises.

The Commission's order in docket 05-GI-106 ("the 106 Order") requires that all Wisconsin natural gas utilities submit annual natural gas supply plans to the Commission for approval. The supply plans must include the following: an annual sales forecast disaggregated by month, season and customer class; an annual capacity forecast and an annual commodity forecast (based on the annual sales forecast) which details how the utility plans to meet the monthly and seasonal needs of its customers; and an forecast of the utility's capacity releases and sales showing expected monthly volumes of capacity to be released and an estimate of monthly revenues to be derived from such capacity releases.

The 106 Order also required each natural gas utility to submit to the Commission for staff approval all changes in firm capacity, storage, firm supply and any other reliability-related changes not included and approved in its annual supply plan. The supply plan reviews mandated by the 106 Order achieved two important regulatory objectives — the assurance that each utility had under contract adequate pipeline capacity and commodity to meet the anticipated needs of its sales customers; and the assurance that the anticipated cost of providing utility sales service was reasonable.<sup>1</sup> The 106 Order did not establish a procedure for gas supply plan reviews with broad public participation due in large part to the technical complexity of the review and the confidential nature of the information which underlay the gas supply plans.

ANR has sought the following relief from the Commission: (1) An order permitting ANR to intervene in the gas review proceeding filed by Wisconsin Gas in compliance with the

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<sup>1</sup> The annual supply plan approval is based on a utility's anticipated costs of providing service to its sales customers. Since it is based on estimated costs, the annual supply plan is not a final determination of the reasonableness of the utility's actually-incurred gas costs. The 106 Order established three types of gas cost recovery mechanisms under which a final determination of the reasonableness of actually-incurred gas costs would be made.

106 Order; (2) A contested case proceeding pursuant to Wis. Stat. § 227.42 concerning the Gas Supply Plan Supplement or, in the alternative, for the Commission to hold a hearing on it; (3) An order requiring disclosure of certain documents received by the Commission under a Confidential Request or otherwise being held as confidential pertaining to the Gas Supply Plan Supplement; and (4) A prehearing conference scheduled for the hearing on the Gas Supply Plan.

**1. Intervention By Right In the Commission's Review of the Gas Supply Plan Supplement.**

ANR seeks intervention by right in the Commission's review of the Gas Supply Plan Supplement. ANR was a party in docket 05-GI-106, the Commission's investigation into the recovery of gas supply costs. The 106 Order established a process under which a Wisconsin natural gas utility obtains the preliminary approval of the Commission for its anticipated gas supply costs. This review process contemplates an annual review of the various utilities' gas supply plans to assure compliance – on a prospective basis – with the various principles and requirements of the 106 Order. It is significant that the Commission did not establish a review process with mandatory participation rights for any person, other than the public utility seeking approval of its gas supply plan. This choice of process reflected, in no doubt, several factors, including the complex technical nature of the review and the proprietary nature of the cost information presented by a utility as part of its annual gas supply plan.

ANR seeks intervention in the Commission's review of Wisconsin Gas's filing primarily in its capacity as a provider of transportation services to Wisconsin Gas. It has been unable to identify any statutory provision or any Commission rule or order which makes its participation in the Commission's review of the Gas Supply Plan Supplement indispensable or necessary. ANR

will not be directly affected by the outcome of the Commission's review. Commission approval of the precedent agreement, should this occur, will not abrogate any existing contracts that ANR has with Wisconsin Gas and will not harm any other property interest of ANR. The Commission's gas supply review process is not a proceeding in which the substantial interests of any third parties are determined or affected. The only "interested" participant in such a review is Wisconsin Gas since it alone bears the risk that its gas supply procurement decisions will be deemed imprudent and not eligible for rate recovery from its sales customers. Hence, as a preliminary matter, the Commission finds that its review of the Gas Supply Plan Supplement is not a "proceeding" under Wis. Admin. Code § PSC 2.02 and that intervention by ANR into the compliance review process is inappropriate.

The Commission has previously ruled that intervention by right in a pending proceeding requires a showing that the party seeking such participation demonstrate that it have standing *Application of Madison Gas and Electric Company et al. For Approval of Gas Supply Plans*, dockets 3270-GP-100/6640-GP-100/6650-GP-100/6690-GP-100, (May 7, 1998); Order on Rehearing, (June 2, 1998). Under Wisconsin law, standing for judicial review (and hence intervention by right) is determined using a two-part test: First, the petitioner must demonstrate that it has sustained an injury due to an agency decision. That injury must not be hypothetical or conjectural, but must be "injury in fact." Second, the petitioner must show that the injury is to an interest which the law recognizes or seeks to regulate or protect. *Town of Delavan v. City of Delavan*, 160 Wis. 2d 403, 410-11, 466 N.W.2d 227 (Ct. App. 1990; *Waste Management of Wisconsin, Inc. v. DNR*, 144 Wis. 2d 499, 505, 424 N.W.2d 685, 687 (1988).

In its application, ANR has claimed that it has a “substantial interest in the delivery of competitive, reliable and cost-effective natural gas transportation service to utilities and ultimately to ratepayers in Wisconsin.”<sup>2</sup> ANR claimed that the following injuries are peculiar to it and result from or are threatened by the Commission’s approval of the Gas Supply Plan Supplement:

1. Threatened injury to its ability to continue to provide reasonable rates, without additional stranded costs inflated by redundant transportation costs;
2. Injury to ANR’s present and future business relations as a result of public statements made by Wisconsin Gas and presumably repeated, if not expanded, in the Wisconsin Gas Supply Plan Supplement;
3. Injury to the economic interests of ANR’s shareholders, employees, and communities and businesses relying on natural gas transportation service supplied by ANR;
4. Injury to all of ANR’s customers who will be affected by the Guardian Pipeline and Wisconsin Gas Lateral in terms of, among other things, stranded costs and increased rates;
5. Injury to ANR’s “good name, reputation, honor and integrity.”

These alleged injuries may be classified as: (a) economic injuries to ANR; (b) economic injury to ANR customers and employees and affected communities; and (c) injury to ANR’s good name, reputation, honor and integrity. None of these alleged interests and injuries satisfies the two-part standing test.

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<sup>2</sup> ANR further claimed that its “interest, and those of its customers both within and without Wisconsin, will be injured if the PSCW approves the Wisconsin Gas Supplement based on information heard in a confidential, non-public proceeding.” ANR also claimed that it has “a direct and substantial interest in the integrity of procedures used by the PSCW in making decisions that affect the natural gas rates and facilities in Wisconsin.” These appear to be related claims of a substantial interest in the process by which a decision is made concerning the Gas Supply Plan Supplement. It may be that ANR would have a legally protected procedural interest in a proceeding in which its substantial interests were determined by the Commission. However, it is unclear -- and ANR does not provide any support for -- the claim that it has a substantial interest in the process by which the Commission determines matters which do not affect the substantial interests of ANR.

a. **Economic Injury to ANR**

The first claimed interest is that of a vendor of transportation services desiring to continue its business arrangements with its current customer free from competition. The Wisconsin Supreme Court has made clear that unless a statute indicates an intent to protect a competitor (e.g., Wis. Stat. § 196.50), “economic injuries which result from lawful competition cannot, in and of itself, confer standing on the injured business to question the legality of any aspect of a competitor’s operations.” *State ex rel. 1<sup>st</sup> Nat. Bank v. M&I Peoples Bank*, 95 Wis. 2d 303, 311, 290 N.W.2d 321 (1979) quoting *Hardin v. Kentucky Utilities Co.*, 390 U.S. 1, 5-6 (1968). As was discussed above, ANR has not cited any statute, Commission rule or order which evidences any intent that ANR’s competitive interests are to be protected in a gas supply plan review process. Hence, ANR’s competitive interest is not sufficient to confer standing on it for purposes of the Commission’s review of the Gas Supply Plan Supplement.

Numerous decisions of the Wisconsin Supreme Court support this conclusion:

*Milwaukee v. Public Service Commission*, 11 Wis. 2d 111 (1960); *Wisconsin Hydro Electric Co. v. Public Service Commission*, 234 Wis. 627 (1940); *Wisconsin Coal Bureau, Inc. v. Public Service Commission*, 244 Wis. 435, 12 N.W.2d 743 (1944); and *Wisconsin Power & Light Co. v. Public Service Commission*, 45 Wis. 2d 253, 172 N.W.2d 639 (1969).

In *Milwaukee*, the Court found that the City of Milwaukee had no standing to challenge orders of the Commission authorizing Fox Point, Whitefish Bay and Glendale to construct water supply systems for their respective municipalities. Prior to the Commission’s action approving the construction of water supply systems for Fox Point and Whitefish Bay, those communities purchased water from the City of Milwaukee Water Utility at wholesale. In the case of the



City of Glendale, the city had rejected an offer of the Milwaukee Water Utility to provide water to the city and determined to provide its own supply of water. The Court found that the financial impact on Milwaukee resulting from the Commission's orders was not sufficient to confer standing on Milwaukee.

In *Wisconsin Hydro Electric Co.*, the Court held that Wisconsin Hydro did not have standing to contest a decision of the Commission authorizing the City of Cumberland to install its own generating plant. For more than fifteen years, Wisconsin Hydro had provided electricity to the City of Cumberland municipal electric utility at wholesale and claimed that in order to supply such electrical energy to Cumberland, it had invested large sums of money in equipment. *Id.* at 629. When the contract under which the energy was supplied expired and the parties could not agree on a new contract, the city petitioned the Commission for authority to construct a diesel generating plant. The Commission approved the construction.

Wisconsin Hydro sought judicial review of the Commission's decision pursuant to then Wis. Stat. § 196.41 which permitted review of a Commission order by "any public utility or railroad and any person in interest . . . ." The Court held that the loss of business by Wisconsin Hydro was not sufficient to give it an "interest" in the Commission's order authorizing the construction of the generating plant. *Id.* at 634.

In *Wisconsin Coal Bureau*, the Wisconsin Supreme Court held that the Wisconsin Coal Bureau and the Wisconsin Railroad Association lacked standing to review an order of the Commission authorizing Wisconsin Southern Gas Company to construct a natural gas pipeline to connect its facilities with Natural Gas Pipeline Company. "[T]he possible consequence that the use of a commodity [natural gas] which they cannot transport may diminish the earnings of the

railroads or their employees does not create any legal right on their behalf to prevent the use of such other commodity.” *Id.* at 443.

Likewise, in *Wisconsin Power & Light Co.* the Court held that WP&L lacked standing to review an order of the Commission authorizing the Richland Center municipal electric utility to construct an interconnect with Dairyland Power Cooperative. Prior to this time, Richland Center had purchased backup power from WP&L. The purpose of this interconnect was to permit Richland Center to purchase its backup power from Dairyland rather than from WP&L. After holding that WP&L was not entitled to special protection under Wis. Stat. § 196.495, the Court concluded that WP&L lacked standing to object to the Commission’s order: “[T]he appellant is merely in the position of one who by reason of expenditures for facilities has a financial interest in the application of Richland Center. In *Milwaukee v. Public Service Commission* (1960), [citation omitted] such financial interest was held to be insufficient to render one an ‘aggrieved party’ with standing to contest another’s application to expand facilities.” *Wisconsin Power & Light*, *supra* at 261.

Also, directly on point is the decision of the Circuit Court for Dane County in *ANR Pipeline Company v. Public Service Commission of Wisconsin*, Case No. 87-CV-0280 (1987). In this case, the Circuit Court denied ANR standing to obtain judicial review of a Commission order authorizing Wisconsin Natural Gas Company to construct a main extension and related facilities necessary to interconnect with the Moraine Pipeline Company. The purpose of the authorized construction was to permit Wisconsin Natural (now Wisconsin Electric Power Company – Gas Operations) to purchase natural gas and transportation services from a pipeline other than ANR. Then, as now, ANR alleged that it would suffer economic harm if it were

subject to increased competition from another pipeline. In rejecting this claim of injury as a basis for standing, the Court held that ANR did not have standing to seek judicial review of the Commission's order.

The case law makes clear that ANR's interest in protecting its current business relationship with Wisconsin Gas is not sufficient to confer standing on ANR for purposes of the Commission's review of Gas Supply Plan Supplement.

**b. Economic Injury To ANR Customers And Employees And Communities**

ANR has claimed that ANR customers, employees and communities would suffer economic injury if the Commission approved the Gas Supply Plan Supplement. These claims do not establish the substantial interest test since they are alleged injuries of others, not of ANR. It is well-established that a party cannot achieve standing by asserting the interest of others. *Sierra Club v. Morton*, 405 U.S. 727 (1972).

**c. Alleged Injury To ANR's Good Name And Reputation**

ANR has alleged threatened injuries to its "present and future business relations as a result of public statements made by Wisconsin Gas and presumably repeated, if not expanded, in the Wisconsin Gas Supplement." Application at 16. ANR has also claimed that it may suffer injury to its "good name, reputation, honor and integrity."

These alleged injuries fail the substantial interest as well as the direct injury tests for standing. ANR clearly has an "interest" in its business reputation. However, this interest is not a "substantial interest" in the context of the Commission's gas supply plan reviews. The Commission established the annual gas supply plan review and approval process (1) to assure that natural gas sales service was provided reliably and (2) to protect the financial interests of the

utilities' gas supply customers. Protection of the reputation interest of service vendors is not a core function of the gas supply plan approval process.

These alleged threatened injuries also are conjectural and are not directly related to the gas supply plan approval process. The public statement that ANR points to as evidence of potential harm to its reputation and business reputation (Application of ANR, Exhibit 2) is a press release in which the president and chief executive officer of Wisconsin Gas made general statements that "[t]he project serves an urgent need in the region" and that "Guardian will bring competition and greater supply reliability to the market, and along with it, lower gas costs and competitive services to our customers and other natural gas users in the region." Wisconsin Gas's president is also quoted as stating that "[w]ith the added capacity from this pipeline, we will have the necessary gas capacity to meet the needs of Wisconsin consumers." The press release does not even contain a reference to ANR let alone any comments which might be fairly characterized as being critical of ANR's performance as a pipeline or to its ability to provide additional natural gas supplies to Wisconsin. Any harm to ANR's reputation based on these claims is conjectural at best.

ANR's fears that the Gas Supply Plan Supplement might contain information harmful to its business reputation among its current and prospective customers is also without foundation. Even if the Gas Supply Plan Supplement contained information which ANR fears it does, the Supplement has been filed confidentially and will not be disclosed to the public – unless ANR is successful in making the information in the filing public. Conjectural harm will not support standing. *Town of Delavan v. City of Delavan*, 160 Wis. 2d at 411.

**2. ANR's Right to a Hearing Under § 227.42**

ANR must satisfy all of the following four conditions in order to obtain a contested case hearing pursuant to Wis. Stat. § 227.42 (1):

- (a) A substantial interest of the person is injured in fact or threatened with injury by agency action or inaction;
- (b) There is no evidence of legislative intent that the interest is not to be protected;
- (c) The injury to the person requesting a hearing is different in kind or degree from injury to the general public caused by the agency action or inaction; and
- (d) There is a dispute of material fact.

**a. Standing Test Embodied in Subsection (1)(a)**

Subsection (1)(a) of § 227.42 embodies the two-part standing test – injury in fact caused by agency action and inaction and the existence of a substantial interest of the person seeking the hearing. The Commission has found previously that ANR's various claims of interest are not sufficient to confer standing on it for purposes of the Commission's review of gas supply plans. Since none of the claims of injury and interest are "substantial interests" under the two-part standing test, ANR fails the test in Wis. Stat. § 227.42 (1)(a).

**b. Evidence of Legislative Intent To Protect Asserted Interest Required by Subsection (1)(b)**

Subsection (1)(b) requires that a person demonstrate that there is no evidence of legislative intent that the asserted interest is not to be protected. Stated somewhat differently, if there is evidence of legislative intent that the asserted interest is not a protected interest, the person will not be eligible for a mandatory contested case hearing under Wis. Stat. § 227.42 (1).

The public utility regulatory scheme in Wisconsin is designed to protect ratepayers — not competitors of the utility. For example, in *Wisconsin Power & Light Co.*, 45 Wis. 2d 253, 259,

172 N.W.2d 639, 641 (1969), the Wisconsin Supreme Court has held that “the predominant purpose underlying the public utilities law is the protection of the consuming public rather than the competing utilities.” *See also, Wisconsin’s Environmental Decade, Inc. v. Public Service Commission*, 81 Wis. 2d 344, 351, 260 N.W.2d 712, 715-16 (1978). Since the legislative intent of ch. 196 is the protection of the consuming public and not competitive interests—such as those alleged, ANR’s claims of interest do not meet the second test under Wis. Stat. § 227.42 (1).

**c. Unique or Particularized Harm**

ANR has claimed that it will suffer unique or particularized harm to itself primarily in two areas: harm to its economic interests arising from the loss of business to Guardian Pipeline; and harm to its business relationships and good name. As has been discussed above, neither of these asserted interests are “substantial interests” under the gas supply plan review process established under the 106 Order. Moreover, the claimed injury to ANR’s business relationships and good name are purely conjectural.

**d. Disputes of Material Fact**

The Commission does not need to decide this issue. ANR must satisfy all of the four statutory criteria in order to have the right to an evidentiary hearing under the statute and ANR has failed to meet the first three. There may be disputed issues of material fact (such as the impact of the Guardian Pipeline on ANR’s competitive interests) but there is another process before the Federal Energy Regulatory Commission that will explore these matters. *See* Sections 4 and 5 of the Natural Gas Act, 15 U.S.C. § 717 (c) and (d).

Since ANR has not met all four of the statutory criteria under § 227.42 (1), it has failed to establish its entitlement to a contested case hearing under the statute.

e. **Discretionary Hearings Under Chapter 196 Expressly Authorized by Law**

In addition to meeting the four criteria established by subsection (1), ANR must also show that the gas supply plan review process is not exempted by subsection (3) from the right to a hearing established by subsection (1). Subsection (3) provides in part that “this section does not apply to . . . actions where hearings at the discretion of the agency are expressly authorized by law.” The Commission has express authority pursuant to Wis. Stat. § 196.02 (7) to hold hearing at its discretion on any matter arising under ch. 196: “In any matter within its jurisdiction, including, but not limited to chs. 184, 197 and this chapter, the commission may initiate, investigate and order a hearing at its discretion upon such notice as it deems proper.” This broad grant of discretionary hearing power to all matters arising out of ch. 196 — including an investigation into Wisconsin Gas’ Gas Supply Plan Supplement — triggers the exemption under Wis. Stat. § 227.42 (3).

**3. Request For Disclosure of Documents and For a Prehearing Conference**

ANR has sought disclosure of numerous documents which have been filed by Wisconsin Gas under the Commission’s confidentiality procedure. ANR has sought these documents as part of its request for a hearing on Wisconsin Gas’s Gas Supply Plan Supplement. Since the Commission has not granted ANR’s request for intervention and a contested case hearing under Wis. Stat. § 227.42, the Commission does not need to decide this issue. ANR has also sought disclosure of the same documents under the Public Records Law, Wis. Stat. §§ 19.31 et seq. This request was addressed by the Records Custodian on June 3, 1999 in accordance with the Public Records Law.

ANR has also requested that the Commission schedule a prehearing conference as part of its review of the Gas Supply Plan Supplement. Again, in light of the Commission's order denying intervention and a contested case hearing in this review, there is no reason for the Commission to schedule a prehearing conference in this review.

In summary, ANR has sought to intervene as a matter of right in a Commission compliance review of Wisconsin Gas requested supplement to its approved gas supply plan. The review of this filing is not a case or proceeding in which ANR can intervene. Even if this review did constitute a case or proceeding, ANR has not established that it has standing to intervene as a matter of right in the review of the Gas Supply Plan Supplement. ANR has also sought a mandatory contested case hearing on the Gas Supply Plan Supplement pursuant to Wis. Stat. § 227.42. It has failed to establish compliance with all four criteria necessary to establish a right to a hearing under this statute. The broad grant of discretionary authority to hold hearings on gas supply plans under Wis. Stat. § 196.02 (7) triggers the exemption under Wis. Stat. § 227.42 (3). The request for disclosure of documents was not acted on by the Commission in light of its disposition of ANR's request for intervention and a contested case hearing. The Commission's Records Custodian disposed of ANR's collateral request for the same documents under the Public Records Law. Finally, in light of the Commission's decision



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not to grant ANR's request for intervention and for a contested case hearing, the Commission declined to order a prehearing conference scheduled for this review.

Dated at Madison, Wisconsin, \_\_\_\_\_

By the Commission:

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Lynda L. Dorr  
Secretary to the Commission

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See attached Notice of Appeal Rights